

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Dale E. Holloway, Jr.

v.

Case No. 22-cv-9-SE

NH Department of Corrections,
Commissioner

ORDER

After due consideration of the objection filed, I herewith approve the Report and Recommendation of Magistrate Judge Andrea K. Johnstone dated September 21, 2022 (doc. 16.). For the reasons explained therein, claims 1(b), 2, 3, and 5 are dismissed, and the court finds that Mr. Holloway has not exhausted his state remedies as to claims 1(a), 4, 6, and 7.¹

Magistrate Judge Johnstone provided Mr. Holloway with 30 days to file a motion to stay the case so that he can exhaust his state court remedies, demonstrate that he has already exhausted his state remedies as to each claim, or move for voluntary dismissal of all claims as to which he has not already demonstrated exhaustion of his state remedies. Doc. 17. Mr. Holloway's enclosure letter sent with his objection to the Report and Recommendation (doc. 18) indicates that he included a motion to stay, but the envelope did not contain a motion to stay. The deadline is extended an additional 30 days from the date of this order. If Mr. Holloway does not file a timely motion to stay,

¹ This order adopts the Report and Recommendation's reference numbers for the claims alleged.

demonstrate exhaustion of his claims, or seek to forego his unexhausted claims within the time allowed, the court will dismiss claims 1(a), 4, 6, and 7, without prejudice, for failure to demonstrate exhaustion of state remedies.

Additionally, finding that the petitioner has failed to make substantial showing of the denial of a constitutional right, the court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); Rule 11, Rules Governing Habeas Corpus Cases Under Section 2254; First Cir. LR 22.0.

So Ordered.

A handwritten signature in dark ink, appearing to read 'SDElliott', is written above a horizontal line.

Samantha D. Elliott
United States District Judge

Date: November 4, 2022

cc: Dale E. Holloway, Jr., pro se